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## Administrative Restrictions with Respect to Keeping Pet Animals in the Light of Polish Law and the Convention for the Protection of Pet Animals

People have long kept animals by their side, often allowing them to live in their own homes. Throughout the centuries, this has primarily aimed at using the skills of an animal or obtaining products of animal origin. Keeping animals as companions to humans has also had a long history and examples can be seen even in the earliest times, but on a mass scale it became popular as late as in the 20<sup>th</sup> century.<sup>1</sup> As the custom of keeping animals as companions became more widespread, legal regulations began to emerge, setting out the rules for keeping, reproduction and trade of such animals. Their aim is to protect animals in a humanitarian way, prevent their overpopulation, reduce animal homelessness, protect endangered animal species, as well as to ensure the safety of people and other animals.

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<sup>1</sup> Cf. Ł. Smaga, *Ochrona humanitarna zwierząt*, Białystok 2010, p. 232.

One of the most important regulations in this respect is the European Convention for the Protection of Pet Animals (hereinafter referred to as the Convention) adopted within the Council of Europe.<sup>2</sup> The Convention was signed on 13 November 1987 in Strasbourg and entered into force on 1 May 1992. The aim of the Convention is to ensure the well-being of animals, including above all pets kept for private pleasure and company.<sup>3</sup>

According to Art. 2(2) of the Convention, none of its provisions may affect the implementation of other instruments for the protection of animals or for the preservation of endangered species. It does not therefore preclude the application of the provisions of other international agreements aimed at the protection of animals, including, in particular, the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed on 3 March 1973 in Washington,<sup>4</sup> the Convention on the Conservation of European Wildlife and Natural Habitats signed on 19 September 1979 in Bern<sup>5</sup> and the Convention on the Conservation of Migratory Species of Wild Animals signed on 23 June 1979 in Bonn.<sup>6</sup>

To date, 24 of the 47 Member States of the Council of Europe have ratified the Convention, including Austria, Azerbaijan, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Norway, Portugal, Romania, Serbia, Spain, Sweden, Switzerland, Turkey and Ukraine. The Netherlands has also signed the Convention, but has not ratified it to date.

Poland has not signed the Convention and the protection of pets in the Polish legal system is based on the provisions of the Animal Protection Act of 21 August 1997 (hereinafter referred to as APA).<sup>7</sup> What has been indicated as the reason for the lack of ratification is the fact that the scope of the Convention has been partially specified in the provisions of APA, which in some cases are more stringent than the provisions of the Convention, and also that the possible binding by the provisions of the Convention will result in the need to make significant changes to these provisions, including the

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<sup>2</sup> The European Convention for the Protection of Pet Animals signed in Strasbourg on 13 November 1987, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a67d> [access: 20.01.2010 ].

<sup>3</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/125> [access: 20.01.2020].

<sup>4</sup> The Convention on International Trade in Endangered Species of Wild Fauna and Flora signed in Washington on 3 March 1973, Official Journal of the EU L, 75, p. 4.

<sup>5</sup> The Convention on the Conservation of European Wildlife and Natural Habitats signed in Bern on 19 September 1979, Journal of Laws 1996, No. 58, item 263.

<sup>6</sup> The Convention on the Conservation of Migratory Species of Wild Animals signed in Bonn on 23 June 1979, Official Journal of the EU L 1982 No. 210, p. 11; Explanatory Report to the European Convention for the Protection of Pet Animals, European Treaty Series, No. 125, p. 4.

<sup>7</sup> The Animal Protection Act of 21 August 1997 (consolidated text, Journal of Laws of 2019, item 122, as amended).

introduction of a universal system for the identification and registration of dogs.<sup>8</sup> It has also been stressed that it is necessary to carry out the assessment of the impact of such measures and broad consultations (also with local authorities), which will make it possible to determine the scope of necessary changes in the current regulations and to indicate sources of financing new tasks, resulting from the Convention, for state bodies.<sup>9</sup> This raises the need to analyse the compliance of the regulation contained in the provisions of APA, including in particular those in Chapter 2 relating to pets, with the provisions of the Convention.

The starting point for both regulations is the definition of pets in their provisions. In the light of Art. 1(1) of the Convention, a pet animal is defined as any animal which is kept or intended to be kept for private enjoyment and companionship of people, including, in particular, animals kept at home. In accordance with Art. 4(17) of APA, whenever the Act refers to pet animals, it is understood to mean animals traditionally staying with people at home or in other appropriate accommodation, kept as companions.

The most important element of the definitions in both cases is “keeping the animal as a human companion”. On the basis of the definition in Art. 4(17) of APA, it is often pointed out that a pet is an animal kept in a house or a flat to satisfy human emotional needs, as a human companion or some form of a decoration or attraction of the household.<sup>10</sup> It seems that the phrase “keeping an animal for private enjoyment and companionship” used in Art. 1(1) of the Convention should be understood in the same way.

In contrast to the definition in Art. 4(17) of APA, which stipulates that only an animal “traditionally residing with a human being in his or her home or in another suitable place” can be considered a pet animal, the definition in Art. 1(1) of the Convention states that a pet animal is understood to mean any animal kept for pleasure or companionship, including in particular an animal kept indoors. The reference in the definition in Art. 4(17) of APA to the criterion of “traditionally residing with a human being in his or her home” raises important questions. It can in many cases be difficult to determine which animals “traditionally reside with a human being in his or her home”. In particular, multiculturalism and the progressive globalisation of the modern world may be an obstacle in this respect. While the presence of certain animals (e.g. dogs) under one roof with humans is obvious in some parts of the world,

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<sup>8</sup> Letter of the Minister of Agriculture and Rural Development of 21 October 2016, ref. No. DSPiO.WI.4810.436.2016, containing a response to parliamentary question No. 6834 of 20 October 2016 on the ratification of the European Convention for the Protection of Pet Animals.

<sup>9</sup> *Ibidem*.

<sup>10</sup> Judgement of the Supreme Administrative Court of 8 November 2012, II OSK 2023/12; judgement of the Supreme Administrative Court of 29 April 2009, II OSK 1953/08; judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski of 4 December 2014, II SA/Go 784/14; judgement of the Voivodeship Administrative Court in Lublin of 10 November 2016, II Sa/Lu 656/16.

in others it can be assessed negatively (e.g. in terms of religious beliefs). Secondly, it is important to note that habits of keeping different animal species in homes are evolving rapidly. In this context, the legal doctrine points out that pets are also those animals that people only recently started to keep, under the influence of a certain fashion,<sup>11</sup> and that the statutory definition of pets is open and subject to expansion as the circle of animals kept by humans as companions expands.<sup>12</sup> While accepting the accuracy of both statements, it should be pointed out that even those animal species that are kept by humans as companions very rarely, or even exceptionally, if they are kept as companions, should be in any case treated as pets despite the fact that they do not meet the requirement under Art. 4(21) of APA to belong to animals that have traditionally been kept with humans in their home or other appropriate accommodation. If interpreted differently, such situations would remain outside the existing legal framework. For these reasons, the solution adopted in Art. 1(1) of the Convention should be considered much more appropriate. The reference to the element of keeping an animal at home appears in this case to be merely an indication to assess in what role an animal is kept, but determining this circumstance is not necessary to qualify an animal as a pet.

In the light of Art. 1(1) of the Convention, a pet animal is understood to mean not only an animal which is kept by humans for their pleasure and company, but also intended for such purposes. Art. 2(1) of the Convention states which are parties to the Convention are required to implement the provisions of the Convention with regard to companion animals kept in households, in establishments for trading and commercial breeding, in animal sanctuaries, and also with regard to stray animals. The definition contained in Art. 4(17) of APA does not explicitly refer to the category of animals which are intended to be kept as companions to humans, but the content of the provisions of Chapter 2 of APA, which lay down, *inter alia*, restrictions on the reproduction, placing on the market and acquisition of pet animals, makes it clear that this definition should also cover animals which are intended to be kept as companions to humans within the meaning of Art. 1(1) of the Convention, but can only potentially be acquired for that purpose.

On the basis of the definition in Art. 4(17) of APA, judicial decisions have expressed the view that an animal becomes a pet animal only when emotional ties are established between a human being and that animal and the human herd grants it the right to live with people in their immediate vicinity as a member of the herd, and that a pet animal is treated by its members as a favourite (i.e. an individual which is liked more than other individuals of the same species, a pupil or a foster child) or a member of the family herd.<sup>13</sup> The Preamble to the Convention also points to the

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<sup>11</sup> W. Radecki, *Ustawa o ochronie zwierząt. Komentarz*, Wrocław 2003, p. 29.

<sup>12</sup> K. Kuszlewicz, *Prawa zwierząt. Praktyczny przewodnik*, Warszawa 2019, p. 82.

<sup>13</sup> Judgement of the Supreme Administrative Court of 29 April 2009, II OSK 1953/08, *Legalis*.

element of pets remaining in a special bond with people. However, it seems that the existence of an emotional bond between a human being and an animal cannot be taken into account for the qualification of an animal as a pet animal either under the definition in Art. 4(17) of APA or Art. 1(1) of the Convention. This would lead to the conclusion that the restrictions and requirements for keeping pets laid down in the provisions of APA and the Convention only apply to animals for which an emotional bond with a particular trait has been established and which have therefore acquired a specific status as a member of the family herd. Leaving aside the difficulty of how to determine the existence of such a bond in specific situations, it should be noted that in many cases such a bond may not exist at all (e.g. for the offspring of an animal kept as a pet, or for animals which are intended for sale and are pets as defined in Art. 1(1) of the Convention), or it may be of completely differently nature, possibly marked by negative emotions. Such a situation must not mean an exemption from the obligations related to keeping a pet animal.

For the same reasons, it should be concluded that, for the purposes of classifying an animal as a pet animal within the meaning of either of the two definitions, the species it belongs is irrelevant. On the basis of the definition in Art. 4(17), judicial decisions explicitly indicate that reptiles, birds and insects may possibly be considered to be pet animals.<sup>14</sup> Animals occurring in nature as free-living (wild) within the meaning of Art. 4(21) of APA, including exotic animals, may also be kept as human companions. Contrary to the position presented in the doctrine, animals of predatory or venomous species, dangerous for human or animal life, may also be considered pets.<sup>15</sup> It should be assumed that in every case when animals are kept as human companions they should be treated as pets. Also the definition in Art. 1(1) of the Convention does not preclude that animals which are wild in nature may be kept as pets. Although the Preamble to the Convention states that the keeping of specimens of wild fauna as pet animals should not be encouraged, this stipulation does not amount to a prohibition.

The provisions of the Convention do not prohibit the keeping of wild animals. They only impose an obligation on the parties to the Convention to pay particular attention to the possible negative consequences for the health and well-being of wild animals if they are acquired and kept as pets. This should be done through the development of information and education programmes so as to promote awareness and knowledge concerning the keeping, breeding, training, and trading of pet animals in accordance with the requirements of the Convention. There should be no doubt that a wild animal kept as a pet animal is protected under the Convention. In this context, it should be concluded that the view in the doctrine – that the provisions of APA do not provide

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<sup>14</sup> Judgement of the Voivodeship Administrative Court in Lublin of 10 November 2016, II Sa/Lu 656/16.

<sup>15</sup> For a different view, see W. Radecki, *Ustawa o ochronie zwierząt...*, p. 29 and idem, *Ustawy o ochronie zwierząt, o doświadczeniach na zwierzętach – z komentarzem*, Warszawa 2007, p. 47.

the slightest basis for differentiating the situation of animals from a humanitarian point of view according to their degree of aggressiveness or the risk they pose to their environment<sup>16</sup> – remains fully valid also under the Convention.

Taking into account both definitions, it should be concluded that both the definition in Art. 4(17) of APA and the definition in Art. 1(1) of the Convention make it possible to classify animals which are kept as companions to humans and at the same time act as livestock or animals used for special purposes to both categories simultaneously and consequently to apply to them, to the relevant extent, the provisions relating to specific categories of animals.<sup>17</sup> Under both definitions, it should also be possible to change the status of an animal during the period when it is kept.

From the point of view of the scope of application of the regulation contained in the provisions of APA, it is important that according to its Art. 2(1), the provisions of this Act regulate only the treatment of vertebrate animals. Thus, keeping, raising, breeding of and trade in pet animals which are invertebrates remain outside the scope of the regulation of APA. The Convention does not provide for an analogous exclusion, and in view of Art. 1(1) of the Convention, according to which a pet is every animal kept in a household for enjoyment and companionship or intended for such a purpose, it should be assumed that the rules of keeping animals specified in the Convention also apply to invertebrate animals.

When laying down the rules on the keeping of pets, Art. 6 of the Convention introduces a restriction that an animal may only be sold to a person under 16 years of age if the legal guardian of that person gives his or her consent to purchase the animal. As a rule, the provisions of Polish law do not make the acquisition of the right to an animal dependent on having any specific qualifications.<sup>18</sup> In particular, they do not explicitly require a certain age. It should be noted, however, that in the light of Art. 12 of the Act of 23 April 1964 – Civil Code,<sup>19</sup> persons who have not attained 13 years of age do not have capacity for legal acts and must not perform legal acts. According to Art. 15 of the Civil Code, minors who have attained 13 years of age have limited capacity for legal rights, and pursuant to Art. 17 of the Civil Code, subject to the exceptions provided for by the law, to be valid, a legal act whereby such a person assumes an obligation requires the consent of his or her statutory representative. The most important exception to the rule, according to which the validity of a legal act whereby a person without full capacity for legal acts assumes an obligation requires the consent of his or her statutory representative, is the possibility, pursuant to Art. 20 of the Civil Code, that such a person may, without the consent of his or her statutory

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<sup>16</sup> Cf. Ł. Smaga, *op. cit.*, p. 232.

<sup>17</sup> For a different view, see K. Kuszlewicz, *op. cit.*, p. 82. The author points out that on the basis of the provisions of APA, the concepts of a pet animal and a farm animal are disjoint, and also that if an animal has a status of a pet, it is not a farm animal.

<sup>18</sup> Cf. M. Goettel, *Sytuacja zwierzęcia w prawie cywilnym*, Warszawa 2013, p. 61.

<sup>19</sup> The Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws of 2019, item 1145).

representative, execute contracts of a type commonly executed in minor current day-to-day matters. It seems that the activities related to the purchase of an animal, due to the wide range of requirements as regards keeping it, should not be included in such contracts, but it cannot be excluded that a different classification may be accepted in a specific situation. In order to exclude the possibility of an animal being purchased by a person under 16 years of age without the consent of the statutory representative, an appropriate regulation should be introduced into APA. It is worth noting that neither the Convention nor APA prejudices the possibility to purchase animals by persons who have been partially or fully incapacitated. It is also important to note that the way an animal is acquired and the legal basis for controlling it are irrelevant from the point of view of both regulations.

Notwithstanding all the above considerations, the provisions of the Convention do not seem to exclude the possibility of introducing additional restrictions on keeping animals as human companions. In the light of Polish law, such restrictions include, *inter alia*: the total prohibition, under Art. 73 of the Act of 16 April 2004 on Nature Conservation,<sup>20</sup> of owning and keeping live animals of species which, for reasons of natural aggressiveness or biological properties, may constitute a serious threat to human life or health and the possibility of keeping animals of other species dangerous to life and health only on the basis of an administrative decision repealing such a prohibition; the obligation, under Art. 10 of APA, to obtain a permit to keep dogs belonging to breeds considered to be aggressive; the obligation, laid down in Art. 10 of the Hunting Law,<sup>21</sup> to obtain a permit to keep greyhounds and their crossbreeds, and also restrictions, under the provisions of APA and, adopted on its basis, the Regulation of the Minister of the Environment on the Protection of Animal Species of 16 December 2016,<sup>22</sup> concerning the possession of animals, indicated in the Annexes to this Regulation, which belong to species under strict or partial protection.

Art. 4(1) of the Convention puts the responsibility for the health and well-being of a pet animal on the person who owns it or has agreed to take care of it, while Art. 3(1) of the Convention prohibits causing unnecessary pain, suffering or distress to a pet animal. There are no provisions in APA which would be a direct equivalent to the above-mentioned regulation with regard to pets. However, Art. 1(1) of APA provides that a person owes respect, protection and care to the animal, while Art. 6(1a) of APA prohibits the abuse of animals, which according to Art. 6(2) of APA, is understood as inflicting or knowingly allowing pain or suffering to an animal. In

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<sup>20</sup> The Nature Conservation Act of 16 April 2004 (consolidated text, Journal of Laws of 2018, item 1614, as amended).

<sup>21</sup> The Hunting Law of 13 October 1995 (consolidated text, Journal of Laws of 2018, item 2033, as amended).

<sup>22</sup> The Regulation of the Minister of the Environment on the Protection of Animal Species of 16 December 2016 (Journal of Laws of 2016, item 2183).

this respect, the regulation contained in APA and the regulation in the Convention should be considered equivalent.

Art. 4(2) of the Convention puts on any person who keeps a pet animal or has agreed to look after it the obligation to provide it with accommodation, care and attention, taking account of the ethological needs of the animal in accordance with its species and breed, in particular to give it suitable food and water; to provide it with adequate opportunities for exercise and take measures preventing its escape. What might be considered the equivalent of this regulation is Art. 9(1) of APA, which requires any person who keeps a pet animal to provide it with space protecting it from cold, heat and precipitation, with access to daylight and allowing it to change its position freely, suitable animal feed and permanent access to water, as well as Art. 9(2) APA, which prohibits keeping a pet on a tether shorter than 3 m and permanently for more than 12 hours per day, or causing it injury or suffering and not providing it with the necessary movement. The scope of obligations imposed by Art. 9 of APA on a person keeping a pet animal does not fully coincide with the obligations set out in Art. 4(2) of the Convention. However, the regulation in APA may be considered as more detailed and even more far-reaching than the requirements set out in the Convention. In accordance with Art. 6(2) of APA, keeping animals in inadequate living conditions, including keeping them in a state of gross negligence or sloppiness, or in spaces or cages which make it impossible for them to maintain their natural position; keeping animals without adequate food or water for a period which exceeds the minimum needs appropriate to the species, and using harnesses, tethers, frames, ties or other devices which force an animal to remain in an unnatural position causing unnecessary pain, injury or death, constitutes a sign of abuse of an animal which, in the light of Art. 35(1a) in conjunction with (1) of APA constitutes an offence punishable by imprisonment of up to 3 years

Art. 10(1) and (2) of the Convention prohibits surgical operations designed to change the appearance of an animal for purposes other than medical treatment, unless they are necessary for medical reasons, are intended for the welfare of the animal or serve to prevent reproduction. This provision excludes in particular the possibility of tail clipping, ear clipping and the removal of claws and fangs. At the same time, Art. 10(3) of the Convention requires that medical procedures during which an animal may experience serious pain must be performed under anaesthesia, applied only by or under the control of a veterinary surgeon, and Art. 10(4) of the Convention requires the performance of procedures during which anaesthesia is not necessary by persons qualified to do so under the national legislation of the state concerned. The equivalent of this regulation is the prohibition, specified in Art. 6(2)(1) of APA, of intentional injuring or mutilating an animal which does not constitute a lawful treatment or procedure, as well as any treatment aimed at changing the animal's appearance and performed for purposes other than saving its health or life, and in particular the cutting of dogs' ears and tails (docking); the prohibition, under Art.



6(2)(1) and (1a) of APA, on marking warm-blooded animals by burning or freezing and the prohibition, under Art. 6(2)(8) of APA, on the performance of surgical procedures and operations by persons without the required licence or in contravention of the medical and veterinary practice, without taking the necessary precautions and in a way that causes avoidable pain. In the light of the provisions of APA, each of these behaviours is treated as a manifestation of animal abuse and constitutes an offence for which there is a penalty of imprisonment of up to 3 years pursuant to Art. 35(1a) in conjunction with (1) of APA.

Art. 5 of the Convention provides that any person who selects a pet animal for breeding should take into account the anatomical, physiological and behavioural characteristics which are likely to put at risk the health and welfare of either the offspring or the female parent. The provisions of Polish law do not contain a similar regulation and, as a rule, do not introduce any requirements or restrictions on the selection of pets for breeding and reproduction. However, what might be considered a restriction in this respect is the prohibition, laid down in Art. 119a of the Nature Conservation Act of 16 April 2004,<sup>23</sup> on crossbreeding animals under strict protection, alien species of animals and also animals obtained as a result of crossbreeding without the permission of the General Director of Environmental Protection. Neither the Convention nor APA impose restrictions on the use of artificial selection methods in view of the possibility of the genes which may be harmful are perpetuated in the population, including in particular methods based on the mating of related animals.<sup>24</sup>

Art. 7 of the Convention provides that a pet animal should not be trained in a way that might be detrimental to its health, in particular by forcing it to exceed its natural capacities or strength or by employing artificial aids which cause injury or unnecessary pain, suffering or distress. In addition, Art. 9(1) of the Convention stipulates that a pet animal may be used in advertising, entertainment, exhibitions, competitions and similar events only on the condition that the organiser has created appropriate conditions for the pet animals to be treated in accordance with the requirements of Art. 4(2) concerning suitable accommodation, care, attention and ethological needs and that the pet animals' health and welfare are not put at risk. Art. 9(2) prohibits the use of any substances, treatments or devices for the purpose of increasing or decreasing its natural level of performance during competition or at any other time when this would put at risk the health and welfare of the animal. The provisions of APA regulate training rules only for animals used in entertainment, shows, films, sports and for special purposes. Under this regulation such animals are treated as a separate category. However, it seems that the animal training rules set out in those provisions should

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<sup>23</sup> The Nature Conservation Act of 16 April 2004...

<sup>24</sup> For more about the essence of such restrictions, see E. Niemieć, M. Nowakowska, *Hodowla rasowych psów i kotów a ochrona zwierząt – analiza polskich rozwiązań prawnych*, „Przegląd Prawa i Administracji” 2017, Vol. 108, pp. 91–93.

apply in all cases where an animal is undergoing training, including the training of pets. In particular, what should apply in each such case is the requirement in Art. 15(1) of APA that conditions of performances, training and exercises should not endanger the life and health of the animals or cause them suffering. The same is true about the prohibition in Art. 17(4) of APA on forcing animals to perform activities which cause pain or are incompatible with their nature.

Art. 3(2) of the Convention prohibits abandoning a pet animal. In this respect, it should be pointed out that, in accordance with Art. 6(2)(11) of APA, abandoning an animal is to be regarded as abuse and penalised on the basis of Art. 35(1a) of APA. Moreover, the doctrine takes the view that under the current state of law the possibility to dispose of the ownership of an animal by abandoning it with the intention of losing the property rights is excluded, as such an act would be sanctioned by absolute nullity as being contrary to the Act.<sup>25</sup> This means that by abandoning an animal one cannot release oneself from liability.

Art. 11 of the Convention specifies the circumstances in which it is admissible to kill a pet animal, stipulating that it is admissible when the suffering of the animal cannot be rapidly interrupted by a veterinarian or other competent person, or in any other emergency situation defined by the laws of a state which is a party to the Convention. In accordance with the provisions of the Convention, an animal may only be killed by a veterinarian or other competent person, and it should be done in a manner which minimises the physical and mental suffering of the animal. As provided for in Art. 11(1) of the Convention, except in emergencies, it is necessary to use methods which cause immediate loss of consciousness and death; starting with deep anaesthesia, followed by step which will ultimately and certainly cause death of the animal, and the person responsible for killing the animal should ensure that the animal is dead before its body is disposed of. At the same time, Art. 11(2) of the Convention prohibits methods of killing which consist in drowning and suffocation, unless they begin with deep anaesthesia or ultimately and certainly cause death of the animal. It also prohibits the use of any poisonous substance or drug, the dose and application of which do not cause immediate loss of consciousness and death or do not allow deep anaesthesia, followed by a step which will ultimately and certainly cause death. In addition, Art. 11(2) of the Convention prohibits electrocution, unless it causes immediate loss of consciousness. Art. 6(1) of APA introduces a general ban on the killing of animals, allowing an animal to be killed only in enumerated cases. At the same time, Art. 33(1) stipulates that an animal may only be killed in a humanitarian manner by inflicting a minimum of physical and psychological suffering. As regards the methods of killing animals, Art. 33(4)(1) of APA provides that, where killing is necessary without delay, it shall be carried out by administering an anaesthetic by a veterinarian. Art. 33(4)

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<sup>25</sup> M. Nazar, *Normatywna dereifikacja zwierząt – aspekty cywilnoprawne*, [in:] *Prawna ochrona zwierząt*, red. M. Mozgawa, Lublin 2002, p. 136.

(1) of APA also allows an animal to be shot by a person authorised to use a firearm, but this possibility applies only to free-living (wild) animals. This regulation should be considered to be in compliance with the provisions of the Convention.

Art. 12 of the Convention allows the taking legislative and/or administrative measures aimed at the reduction of the number of stray animals when a country which is a party to the Convention considers the number of such animals a problem. Such measures must be applied in a such a way so as not to cause avoidable pain, suffering or distress. If animals are to be captured, it should be done with the minimum of physical and mental suffering; if the captured animals are to be kept or killed, it must be done in accordance with the requirements of the Convention with regard to keeping and killing of animals. A regulation concerning handling of stray animals was included in Art. 11–11a of APA and in the Regulation of the Minister of Internal Affairs and Administration of 26 August 1998 on the principles and conditions of capturing stray animals.<sup>26</sup> These regulations include the prevention of animal homelessness in the own tasks of *gmina* districts and impose on them an obligation to establish, by 31 March each year, a programme of care for stray animals and prevention of animal homelessness, including in particular: providing stray animals with a place in an animal shelter; care of free-living cats, including their feeding; capturing stray animals; obligatory neutering or castration of animals in shelters; searching for owners for stray animals; euthanising blind litters; indicating a farm to provide space for farm animals; providing round-the-clock veterinary care in cases of road events involving animals. According to para. 7 of the aforementioned Regulation, devices and measures used to capture stray animals must not pose a threat to their life and health or cause them suffering. Despite the transfer of the powers to determine the principles of care for stray animals and prevention of homelessness of animals to the level of *gmina* districts, the regulation in question should be considered to be in line with the requirements arising from the Convention and it should be assumed that in the event of its ratification no more far-reaching changes would be needed in this respect.

Art. 12(b) of the Convention requires the states which are parties to the Convention to consider the introduction of a system of clear identification of dogs by means causing little or no enduring pain, suffering or distress, such as tattooing as well as recording the numbers in a register together with the names and addresses of their owners; a system of reducing the unplanned breeding of dogs and cats by promoting the neutering of these animals and encouraging finders of stray dogs and cats to report the fact that an animal has been found to the competent authorities. Under the current state of Polish law there is no obligation to mark pet animals. Art. 11a(3) only stipulates that the programs for care of stray animals and prevention of homelessness of animals adopted annually by *gmina* councils may include a plan for

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<sup>26</sup> The Regulation of the Minister for Internal Affairs and Administration of 26 August 1998 on the principles and conditions of capturing stray animals (Journal of Laws of 1998, No. 116, item 753).

marking animals in a given *gmina* district. In practice, such plans are rarely developed. The following are indicated as the reasons for not undertaking such activities: the lack of justification for only some *gmina* districts to engage in them; the fact that it is not obligatory to introduce them, the lack of sufficient financial resources and the lack of legal basis for *gmina* districts to co-finance activities with regard to animals which have owners.<sup>27</sup> At the same time, the necessity to introduce a statutory obligation to mark and register animals in a uniform registration system operating in the whole country has been pointed out for many years.<sup>28</sup>

Art. 8 of the Convention introduces the requirement that any entity which is engaged in trading, commercial breeding or operating an animal sanctuary is obliged to declare this to the competent authority, specifying: the species of animals involved; the person responsible and his or her knowledge; a description of the premises and equipment used. Under this provision, such activities may be carried out only if the person responsible has the knowledge and abilities required for the activity either as a result of professional training or of sufficient experience with pet animals and if the premises and the equipment used for the activity comply with the requirements set out in Art. 4. According to Art. 8(4) of the Convention, the competent authority, on the basis of the declaration made by the applicant, should determine whether or not these conditions have been fulfilled. If these conditions are not met, the competent authority should have the possibility to recommend appropriate changes and, if necessary for the welfare of the animals, it should prohibit the commencement or continuation of the activity. The authority in question should supervise whether or not the above-mentioned conditions are met. The current provisions of Polish law do not subject the activity of selling animals to any form of economic restrictions, they only prohibit the operation of markets and fairs where pets are sold, the marketing and purchase of pets at markets and fairs, and the marketing and purchase of dogs and cats outside the places where they are raised or bred. Taking into account the requirements arising from Art. 8 of the Convention and the principles of the regulation of business activity set out in the provisions of the Law of Entrepreneurs of 6 March 2018,<sup>29</sup> it seems reasonable to propose that economic activity is subject to the obligation to obtain a permit or at least to obtain an entry in the register of regulated activity.

Art. 14 of the Convention imposes on the states which are parties to the Convention the obligation to support information and education programmes promoting awareness and knowledge concerned with the keeping, breeding, trading and training of pet animals in accordance with the requirements of the Convention among organisations

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<sup>27</sup> The Supreme Audit Office, Regional Branch in Białystok, *Zapobieganie bezdomności zwierząt. Informacja o wynikach kontroli*, LBI.430.004.00.2016, Ref. No.9/2016/P/16/058/LBI, p. 8.

<sup>28</sup> *Ibidem*, p. 13; The Supreme Audit Office, Regional Branch in Białystok, *Wykonywanie zadań gmin dotyczących ochrony zwierząt*, LBI-4101-13-00/2012 Ref. No.46/2013/P12/193/LBI, p. 9.

<sup>29</sup> The Law of Entrepreneurs of 6 March 2018 (consolidated text, Journal of Laws of 2019, item 1292, as amended).

and individuals, with attention drawn in particular to the following subjects: the need for training of pet animals for any commercial or competitive purpose to be carried out only by persons with adequate knowledge and ability; the need to discourage gifts of pet animals to persons under the age of 16 without the express consent of their parents or other persons exercising parental responsibilities; giving pet animals as prizes, awards or bonuses and unplanned breeding of such animals; the possible negative consequences for the health and well-being of wild animals if they were to be acquired or introduced as pet animals and the risks of irresponsible acquisition of pet animals leading to an increase in the number of unwanted and abandoned animals. Within the scope indicated above, Art. 8(2) of APA obliges the minister in charge of education and the school system to include the issue of animal protection in the core curriculum, while Art. 8(3) of APA obliges the voivodeship governments to prepare and ensure the implementation of programmes promoting knowledge of the provisions of APA among farmers by voivodeship agricultural advisory centres. These solutions may be considered to meet the requirements arising from the Convention, provided, however, that they will not constitute an obstacle to undertaking educational activities in the field of animal protection also in other forms. It seems that meeting this condition would require appropriate legislative changes, as the current wording of the provisions of Art. 8 of APA is the basis for the adoption of the view in judicial practice, according to which the inclusion, in the appendix to the resolution of a *gmina* council defining the program of care for stray animals and prevention of animal homelessness, of a task related to the education of the inhabitants of the *gmina* district in the field of correct attitudes and behaviours of humans towards animals and in the field of obligations of the owners of animals as part of the program of care for stray animals and prevention of homelessness among animals in the territory of the *gmina* exceeds the scope of the statutory authorisation contained in the above-mentioned Art. 11a of APA, as the provisions of APA entrust this task to the minister in charge of education and school system and the voivodeship government.<sup>30</sup>

Taking into account the above, it should be concluded that, despite the lack of ratification of the Convention, the provisions of APA are, in principle, in line with its provisions, ensuring a level of protection of pets similar to that resulting from the Convention. What is more, by specifying the obligations involved in keeping pets and by specifying the actions which are prohibited with regard to pets, the provisions of APA in many cases turn out to be more precise and seem to ensure a higher level of protection for animals than would result from the standards set by the Convention.

The furthest-reaching differences between the regulation contained in the Convention and the provisions of APA concern the rules set out in Art. 8 of the Convention on the trade and breeding of pets and, to some extent, the running of animal shelters.

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<sup>30</sup> Judgement of the Administrative Court in Kraków of 13 February 2018, II SA/Kr 1574/17, LEX No. 2450473.

At this level, legislative changes would undoubtedly be necessary, consisting in including the activities in the field of trade and breeding of pets in the economic control regulation system. However, what should be considered to be erroneous is the view that, prior to ratification of the Convention, a universal system for the identification and registration of dogs should be introduced, which should reduce the problem of homelessness of animals in the future and make it possible to deal with issues relating to the excessive growth of their population.<sup>31</sup> This is because the presented Art. 12(b) of the Convention only requires the states which are parties to the Convention to consider the need to implement such a system, but this does not oblige them to do so.

Contrary to the concerns that have been expressed,<sup>32</sup> the ratification of the Convention will also not force the need to adapt to its provisions the regulation contained in APA in a way that would result in a reduction of the current level of animal protection. The necessary guarantee in this respect is provided by Art. 2(3) of the Convention, according to which none of the provisions of the Convention limits the possibility for the states which are parties to it to apply more restrictive solutions for the care of pets or to apply the conditions set out in the Convention to categories of animals which are not covered by its regulation.

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<sup>31</sup> The letter of the Minister of Agriculture and Rural Development of 21 October 2016, Ref. No. DS-PiO.WI.4810.436.2016, with a reply to parliamentary question No. 6834 of 20 October 2016 on the ratification of the European Convention for the Protection of Pet Animals.

<sup>32</sup> *Ibidem*.

**Abstract:** The article discusses issues related to the ratification by the Republic of Poland of the European Convention for the Protection of Pet Animals adopted at the Council of Europe Forum. The Convention was signed on 13 November 1987 in Strasbourg and entered into force on 1 May 1992. Its aim is to ensure the welfare of pets kept by humans for pleasure and company. To date, 24 of the 47 Member States of the Council of Europe have ratified the Convention. Poland has not signed it. As the reason for this, it has been pointed out is that the Polish regulation contained in the Animal Protection Act of 21 August 1997 is in some cases more stringent than the provisions of the Convention, as well as the fact that the possible binding by the provisions of the Convention will result in the need to introduce changes to the Polish regulation, including, *inter alia*, a universal system of dog identification and registration. It has also been emphasised that there is a need to assess the impact of the ratification and conduct broad consultations which will allow to determine the scope of necessary changes in the current regulations in force and to indicate sources of financing new tasks resulting from the Convention for the state authorities. The discussion in the article aims at verifying this position by analysing the compliance of the regulation contained in the Animal Protection Act with the provisions of the Convention.

**Keywords:** European Convention for the Protection of Pet Animals; Animal Protection Act of 21 August 1997; ratification; pet animals; humanitarian protection of animals